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M. Edward Burns, Jr.

October 7, 1996

William Canton, Office of the Secretary
Federal Communications Commission
1919 "M" Street, N. W.
Washington, D.C. 20554

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Re: Docket No. 95-59 and Docket No. 96-83

Dear Secretary:

I am an attorney in Colorado who has spent approximately 95% of my time since 1975 representing community associations. I currently serve as a trustee of the *Community Associations Institute* and was the first dean of the *College of Community Association Lawyers*.

The issues involved in location of antennae upon common elements (as opposed to property owned by an individual or areas within the exclusive use of owners) is complex.

The initial challenge is potential issues of "taking without compensation." There is a violation of private property rights for the government to grant the right to make private use of property owned by another or jointly with others.

The location of an antenna on the common elements manifestly deprives the corporate owner or the co-owners of the right to use and control of land. This deprivation is not legitimate and takes away one of the basic rights which each of the effected owners believed had been acquired at the time of purchase. To authorize this private taking *with compensation to the corporation or the co-owners* is unjust, but to authorize such a taking *without compensation* is appalling.

In addition to the taking issues, community associations face additional challenges presented by this proposed rule.

There exists a real potential in Colorado for damages to the common elements caused by the installation and maintenance of antennae.

The physical integrity of roofs in Colorado is paramount as a minor puncture in the roof membrane can become a superhighway to the lowest layers of snow sitting for days on a roof as heat from the interior of the building causes melting and expansion while there exists a solid barrier of unmelted ice and snow above the watery layer.

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The method of attachment of antennae and their aerodynamic shapes become of concern as the Spring winds along the front range of Colorado can reach in excess of 60 miles per hour and as the air moving through the high mountain valleys accelerate above that speed as they are funneled between the surrounding elevations.

The height, shape, and electrical grounding of antennae become of great concern when our Summer lightning storms throw electrical energy into the atmosphere searching for the highest and best conductive object by which that force can be carried to the ground.

Further, there must be an orderly process by which an association may consider the installation of a single antenna with multi-hookups rather than be compelled to accept (1) a farm of antennas in the common elements [it is logical to envision a high rise building containing 10 floors of six units per floor to have a weighty number of antennae on the roof], or (2) the challenge faced should there be no room for yet another antenna and an owner is denied service.

Regulation must also address the cables to run from the antennae to the individual residence. In the case of the high rise building, they must be properly placed in electrical conduits with the expense shared by the users and in situations in which antennae are placed on the ground, the conduits must be buried to prevent potential damage from slip and fall occurrences.

As with antennas on a person's own property or exclusive areas, the association must have the ability to specify where the antennae are to be placed and what vegetation or other visual shielding is required so long as it does not unreasonably delay, unreasonably increase the costs or preclude reception, and allow regulation for clearly defined safety objectives, or to preserve an historic district.

In summary, the unique climatic conditions in Colorado (and I am sure other locations) militate against the granting of a wholesale and unfettered right to install antennae on common elements. My state, in the *Colorado Common Interest Ownership Act*, Colo. Rev. Stat. §38-33.3-101 et seq., has established an orderly process to consider use of the common elements which will allow for recognition of the rights of co-owners and members and will take into consideration issues presented above. The better approach is for the commission not to interfere with this orderly, local process unless future experience demonstrates that it is not functional.

Thank you for considering these comments.

Sincerely,

M. EDWARD BURNS, JR. P.C.

By 

M. Edward Burns, Jr.

MEB/djk